

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION
COMMITTEE ON STATE ADMINISTRATION**

Call to Order: By **CHAIRMAN JOHN COBB**, on February 19, 2003 at 3:40 P.M., in Room 335 Capitol.

ROLL CALL

Members Present:

Sen. John Cobb, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Kelly Gebhardt (R)
Sen. Carolyn Squires (D)
Sen. Mike Wheat (D)

Members Excused: None.

Members Absent: None.

Staff Present: Pat Murdo, Legislative Branch
Mona Spaulding, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 405, 2/14/2003
Executive Action: SB 374; SB 239; SB 339; HB 108; HB 91

HEARING ON SB 405

Sponsor: SENATOR RICK LAIBLE, SD 30, VICTOR

Proponents: Mike Fellows, Montana Libertarian Party; Nancy Schlepp, Montana Farm Bureau

Opponents: None

Informational Witnesses: Mark Cadwallader, Department of Labor & Industry (L&I)

Opening Statement by Sponsor: SENATOR RICK LAIBLE, SD 30, VICTOR, said SB 405 says a state agency cannot enact a rulemaking bill where a fiscal impact equal or greater than \$50,000 will impact citizens. SEN. LAIBLE said it was a form of taxation, and it was the duty of Legislators, not agencies, to make rules that impact citizens.

Proponents' Testimony: None.

Opponents' Testimony: None.

Witness' Testimony: Mark Cadwallader, Legal Counsel, Department of Labor and Industry (L&I)

Questions from Committee Members and Responses: CHAIRMAN COBB asked if the \$50,000 figure was arbitrary. SEN. LAIBLE said yes.

SENATOR CAROLYN SQUIRES asked if, for instance, the Board of Nursing needed to raise fees for licensure of nurses, would that be directed to an Interim Committee; and which one. SEN. LAIBLE said all boards are covered by Interim Committees when the legislature is not in session. The Board of Nursing fee increase would go to the appropriate Interim Committee unless the legislature was in session.

SENATOR SQUIRES said boards are supposed to be able to sustain themselves and increase fees commensurate with their need to operate the board. SEN. LAIBLE referred to Section 1, saying self-sustaining Boards were probably exempt.

SENATOR SQUIRES asked the sponsor for an example of a Board that he thought would be affected by the bill. SEN. LAIBLE said the Department of Revenue.

SENATOR MICHAEL WHEAT asked Mark Cadwallader, Department of Labor & Industry, how he would expect SB 405 to affect agencies. Mr. Cadwallader said, speaking as a staff attorney and not representing an agency position, that the bill appeared to reinforce MAPA language for legislative oversight of rules. He said SB 405 slowed down normal flow by adding a step to the process: New Section 3, subsection 1.

CHAIRMAN COBB asked if Section 4, subsection 3, concerning emergency rules, should be in the bill because interim committees don't meet quickly enough to respond to emergencies. Mr. Cadwallader said he thought the intent was to keep agencies from sidestepping the process.

CHAIRMAN COBB asked if a board was an agency. Mr. Cadwallader said yes. He said about 38 administratively attached professional and occupational licensing boards would be subject

to SB 405. 37-1-134 requires various boards to set fees commensurate with costs, but they can't build up more than a two-year reserve under budget laws.

CHAIRMAN COBB asked if \$50,000 was an appropriate dollar amount. **SENATOR KELLY GEBHARDT** said if \$1.00 affected 2000 people for 25 years, it would equal \$50,000. **CHAIRMAN COBB** said fee increases generally are intended to raise more than \$50,000. He had never seen the scenario mentioned by **SEN. GEBHARDT**. **CHAIRMAN COBB** asked if the intent of SB 405 was to impact fee increases equal to or greater than \$50,000 a year. **SEN. LAIBLE** said yes.

SEN. SQUIRES asked if SB 405 supplemented the Montana Administrative Register (ARM), or added an additional layer. **Mr. Cadwallader** said rulemaking notices are required to be published in the ARM. He said the Department of Labor and Industry published on the World Wide Web, and also sent notices to those requesting them and to those likely to be affected.

SEN. WHEAT asked **SEN. LAIBLE** if this was his own bill. He said yes. **SEN. WHEAT** asked if he would support an amendment supporting an aggregate effect, to affect only those fees equal to or greater than \$50,000 a year. **SEN. LAIBLE** said yes.

SEN. WHEAT said he understood that a fee increase couldn't be promulgated as a rule until it had been reviewed by the appropriate interim legislative committee. He asked what was meant by "reviewed." **SEN. LAIBLE** said that's what interim committees do. Before a fee could be increased, an interim committee reviewed it for appropriateness. Interim committees are comprised of legislators, and it is an appropriate policy.

SEN. WHEAT asked what happened if the interim committee received an inappropriate request. **SEN. LAIBLE** said the interim committee would not approve the fee increase by democratic vote within the committee, which is bipartisan.

SEN. WHEAT said, in effect, this gives a legislative committee veto power for a fee with an annual impact of less than \$50,000. **SEN. LAIBLE** said yes.

SEN. SQUIRES said it was scary to think that an interim committee of perhaps only eight to sixteen people could veto a fee increase. She said, legislators were paid to vote on issues, and should have a voice.

CHAIRMAN COBB, for information, said the legislature has no power after adjournment.

Pat Murdo said the legislature can not appoint a subcommittee or committee to take action for the legislature, either whole or in part.

SEN. GEBHARDT said the interim committee would take a position on a rule, but either way it could come back before the next legislative session.

SEN. SQUIRES said sometimes fee increases are sustaining factors for an agency. SB 405 restricts activity within an agency and instills too much power in a subcommittee.

CHAIRMAN COBB said he was concerned about the possibility that an interim committee might never meet, stop a vote, and stop anything from happening. He asked if **Greg Petesch, Chief Legal Council, Legislative Services Division** had seen the bill. **SEN. LAIBLE** said **Mr. Petesch** had a hand in writing it, and had made changes from the original draft. **SEN. LAIBLE** said his concern was for the legislature to set policy and not let policy be set in a vacuum.

CHAIRMAN COBB said legislators have so much work to do, he can see a possibility of rubber stamping a \$50,000 fee increase. He said it might be better to raise the fee increase limit. **SEN. LAIBLE** said if the Committee felt increasing the limit was appropriate, he would agree.

Closing by Sponsor: **SEN. LAIBLE** thanked the committee.

EXECUTIVE ACTION SB 374

Discussion: **CHAIRMAN COBB** said leadership asked the Committee to reconsider SB 374.

Motion/Vote: **CHAIRMAN COBB** moved TO RECONSIDER SB 374. Motion carried unanimously.

Motion/Vote: **CHAIRMAN COBB** moved that SB 374 DO PASS. Motion carried 3-2 with **SQUIRES** and **WHEAT** voting no.

EXECUTIVE ACTION SB 239

Motion/Vote: **CHAIRMAN COBB** moved to RECONSIDER SB 239 FOR PURPOSE OF AMENDMENT. Motion carried unanimously.

Motion/Vote: **CHAIRMAN COBB** moved to BRING SB 239 BACK TO COMMITTEE. Motion carried unanimously.

Discussion: **Pat Murdo** explained the amendments. {Tape: 1; Side: B}

Motion/Vote: **CHAIRMAN COBB** moved that SB 239 DO PASS AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION SB 339

Motion: SEN. WHEAT moved that SB 339 DO PASS.

Discussion: SEN. WHEAT said he was concerned about opting in or out. He asked Ms. Murdo for an explanation. She said the idea in SB 339 was to give the candidate a choice. If the Secretary of State finds a candidate has gone over the spending limit, then the candidate who is still under the voluntary spending limit has ten days to change his or her mind, file the extra fee, and revise election materials. If a candidate files under the voluntary spending limit and an opponent then files without a limit, the candidate who signed onto the voluntary limit has ten days to change the option.

Motion/Vote: CHAIRMAN COBB moved that AMENDMENT TO SB 339 DO PASS. Motion carried unanimously.

Motion: SEN. WHEAT moved that SB 339 DO PASS AS AMENDED.

Discussion: SEN. WHEAT said SB 339 was a noble idea and should be debated on the Senate floor.

SEN. GEBHARDT was concerned about the disparity in allowable spending between the governor's race and other state-wide candidates, \$1,000,000 and \$150,000 respectively. He said the difference should be more like two to one.

SEN. WHEAT noted that spending limits had been established by looking at past expenditures.

Motion/Vote: CHAIRMAN COBB called for the question on SB 339. Motion carried 4-1 with SPRAGUE voting no.

EXECUTIVE ACTION HB 108

Motion/Vote: SEN. COBB moved that HB 108 BE CONCURRED IN. Motion carried unanimously. SEN. GEBHARDT will carry the bill to the floor.

Motion: SEN. SPRAGUE moved that HB 108 BE CONCURRED IN. Motion carried unanimously.

EXECUTIVE ACTION HB 91

Motion/Vote: SEN. SPRAGUE moved to INDEFINITELY POSTPONE HB 91. Motion carried unanimously.

ADJOURNMENT

Adjournment: 4:40 P.M.

SEN. JOHN COBB, Chairman

MONA SPAULDING, Secretary

JC/MS

EXHIBIT (sts37aad)